

§ 585.602 Penalty.

A common carrier that accepts or handles cargo for carriage under a tariff that has been suspended under § 585.505 or § 585.601 of this part, or after its right to use another tariff has been suspended under those sections, is subject to a civil penalty of not more than \$50,000 for each day that it is found to be operating under a suspended tariff.

PART 586—ACTIONS TO ADJUST OR MEET CONDITIONS UNFAVORABLE TO SHIPPING IN THE U.S. FOREIGN TRADE

Sec.

586.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.

586.2 Conditions unfavorable to shipping in the United States/Japan trade.

586.3 Conditions unfavorable to shipping in the United States/Ecuador Trade.

AUTHORITY: 46 U.S.C. app. 876(1)(b); 46 U.S.C. app. 876(5) through (12); 46 CFR part 585; Reorganization Plan No. 7 of 1961, 26 FR 7315 (August 12, 1961).

§ 586.1 Actions to adjust or meet conditions unfavorable to shipping in specific trades.

Whenever the Commission determines that conditions unfavorable to shipping exist in the United States foreign trade with any nation and issues rules to adjust or meet such conditions, pursuant to section 19(1)(b) of the Merchant Marine Act, 1920, 46 U.S.C. app. 876(1)(b) and 46 CFR part 585, such rules shall be published in the FEDERAL REGISTER and added to this part.

[55 FR 2076, Jan. 22, 1990]

§ 586.2 Conditions unfavorable to shipping in the United States/Japan trade.

(a) *Conditions unfavorable to shipping in the trade.* The Federal Maritime Commission ("Commission") has identified the following conditions unfavorable to shipping in the U.S.-Japan trade, arising out of or resulting from laws, rules, or regulations of the Government of Japan:

(1) Shipping lines in the Japan-U.S. trades are not allowed to make operational changes, major or minor, with-

out the permission of the Japan Harbor Transportation Association ("JHTA"), an association of Japanese waterfront employers operating with the permission of, and under the regulatory authority and ministerial guidance of, the Japan Ministry of Transport ("MOT").

(2) JHTA has absolute and unappealable discretion to withhold permission for proposed operational changes by refusing to accept such proposals for "prior consultation," a mandatory process of negotiations and pre-approvals involving carriers, JHTA, and waterfront unions.

(3) There are no written criteria for JHTA's decisions whether to permit or disallow carrier requests for operational changes, nor are there written explanations given for the decisions.

(4) JHTA uses and has threatened to use its prior consultation authority to punish and disrupt the business operations of its detractors.

(5) JHTA uses its authority over carrier operations through prior consultation as leverage to extract fees and impose operational restrictions, such as Sunday work limits.

(6) JHTA uses its prior consultation authority to allocate work among its member companies (whose rates and business plans are subject to MOT approval), by barring carriers and consortia from freely choosing or switching operators and by compelling shipping lines to hire additional, unneeded stevedore companies or contractors.

(7) The Government of Japan administers a restrictive licensing standard which blocks new entrants from entering into the stevedoring industry in Japan. Given that all currently licensed stevedores are Japanese companies, and all are JHTA members, this blocking of new entrants by the Government of Japan shields existing operators from competition, protects JHTA's dominant position, and ensures that the stevedoring market remains entirely Japanese.

(8) Because of the restrictive licensing requirement, U.S. carriers cannot perform stevedoring or terminal operating services for themselves or third parties in Japan. In contrast, Japanese carriers (or their related companies or